

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:) Chapter 11
)
W. R. GRACE & CO., et al.¹) Case No. 01-01139 (KJC)
) (Jointly Administered)
Reorganized Debtors.)
) Hearing Date: November 20, 2014, at 3:00 p.m.
) Response Deadline: November 3, 2014
)

**DECLARATION OF SEAN E. DEMPSEY IN SUPPORT OF THIRTY-THIRD
OMNIBUS OBJECTION TO CERTAIN LEASE-RELATED CLAIMS (SUBSTANTIVE
OBJECTION)**

COUNTY OF HOWARD)
) ss.
STATE OF MARYLAND)

Sean E. Dempsey, after being duly sworn according to law, deposes and says:

1. I am over the age of 18 and competent to testify. I am Assistant General Counsel—Corporate & Real Estate for W. R. Grace & Co.-Conn. (“Grace-Conn.”), which is one of the above-captioned reorganized debtors (collectively, “Grace” or the “Reorganized Debtors”). I am responsible for reviewing real estate-related claims and the resolution thereof during the chapter 11 cases. In that capacity, I have reviewed the Reorganized Debtors’ *Thirty-Third Omnibus Objection to Certain Lease-Related Claims (Substantive Objection)* (the “Objection”), filed concomitantly herewith. All facts set therein and in this Declaration are based on my personal knowledge, upon information supplied to me by the Reorganized Debtors’

¹ The Reorganized Debtors comprise the following 17 entities: W. R. Grace & Co. (“Grace,” f/k/a Grace Specialty Chemicals, Inc.), W. R. Grace & Co. Conn. (“Grace-Conn.”), Darex Puerto Rico, Inc., Dewey and Almy, LLC (f/k/a Dewey and Almy Company), Gloucester New Communities Company, Inc., Grace Chemical Company of Cuba, Grace Energy Corporation, Grace Europe, Inc., Grace International Holdings, Inc. (f/k/a Dearborn International Holdings, Inc.), Grace PAR Corporation, W. R. Grace Capital Corporation, W. R. Grace Land Corporation, Guanica Caribe Land Development Corporation, Hanover Square Corporation, Kootenai Development Company, Remedium Group, Inc. (f/k/a Environmental Liability Management, Inc., E&C Liquidating Corp., Emerson & Cuming, Inc.), and Water Street Corporation.

employees and professionals retained in these chapter 11 cases, as well as upon my opinion based upon my experience and knowledge of Grace's businesses.²

2. Upon information and belief, the Reorganized Debtors maintain books and records (the "Books and Records") that reflect, among other things, the Debtors' liabilities and the respective amounts owed to their creditors. If called upon to testify, I could and would testify competently to the facts and opinions contained in this Declaration.

- ***Claim No. 66 – H. Anthony Jew and Violet W. Jew.***

3. On December 26, 1986, the lease (for an El Torito restaurant that was part of one of several restaurant chains then owned by Grace) underlying that certain *Lease Guaranty Agreement*, dated September 3, 1980, attached to Claim no. 66, was transferred as part of a stock sale by which Grace divested itself of the afore-mentioned restaurant chains. As part of the transaction, Grace remained liable under the *Lease Guaranty Agreement*. Claim no. 66 states that the original term of the underlying lease expired on July 31, 2008. There were two five-year options to extend the term, neither of which had been exercised as of the date Claim no. 66 was filed. On information and belief, Grace never received notice of either of those options being subsequently exercised. Therefore, according to Grace's books and records, the lease has expired.

4. On information and belief, no demand has ever been made by the claimants under the *Lease Guaranty Agreement*, and therefore no amount was due or owing under the *Lease Guaranty Agreement* as of either the Petition Date or the Effective Date.

² Capitalized terms not defined herein shall have the meaning ascribed to them in, as the case may be, the Objection or the *First Amended Joint Plan of Reorganization in their Chapter 11 Cases* [Docket no. 26368], as it may be further supplemented or otherwise further amended from time to time, and the schedules and exhibits to the foregoing, as they may be in effect from time to time (the "Plan").

- *Claim No. 877 – German American Real Estate Corp.*

5. The lease underlying that certain *Guaranty of Lease*, dated December 12, 1979, as reaffirmed in that certain *Reaffirmation of Guaranty of Lease*, dated February 27, 1980 (together, the “German American Guaranty,” copies of which are attached to Claim no. 877), was transferred on December 26, 1986, as part of the same transaction described above for Claim no. 66.

6. The Reorganized Debtors’ books and records do not contain any record of an ongoing lease (or leases) guaranteed by the German American Guaranty, and upon information and belief, they believe that any such lease or leases expired prior to the Effective Date. The Reorganized Debtors’ books and records further contain no indication that any amount was due or owing to German American under the *German American Guaranty* as of either the Petition Date or the Effective Date.

- *Claim No.13233 – Marshalls of MA, Inc.*

7. The two Subleases documented in Claim no. 13233 (defined in the Objection as the “Jericho Sublease” and “East Meadow Sublease,” respectively) are nonresidential leases. On information and belief, Grace was not in default under either of the Subleases as of either the Petition Date or the Effective Date.

8. The Jericho Sublease’s original expiry was December 29, 2014. On February 11, 2014, the Reorganized Debtors assigned the Jericho Sublease to the prime landlord, Kimco Birchwood North, LLC. On information and belief, the prime landlord and Marshalls subsequently entered into a direct lease with each other for the same premises. The East Meadow Sublease is due to expire on December 31, 2018.

9. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Sean E. Dempsey
Assistant General Counsel—Corporate & Real
Estate
W. R. Grace & Co.-Conn.

SWORN AND SUBSCRIBED before me,
this 2 day of October 2014



Sandra Martin
Notary Public
My Commission Expires: 12/7/2016

